IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 70 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KRISHNAKANT RAMDAS

Versus

STATE OF GUJARAT

Appearance:

MR EE SAIYED for Petitioner

MR SP DAVE APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 03/04/2001

ORAL JUDGEMENT

1. The present Revision Application has been filed under Section 397 of the Code of Criminal Procedure, 1973 (for short "Code"), challenging the order passed on 16.2.2001 by the learned Judicial Magistrate First Class,

at Kadi in Mehsana District below complaint being Criminal Police Inquiry No. 202/6/2001, under which the learned Magistrate passed an order for referring the complaint for inquiry under Section 202 of the Code. The learned Magistrate also directed the said police Station to send report of the inquiry.

2. At the instance of the learned advocates for the parties, the matter was taken up for final hearing.

3. On going through the records, it is found that the present petitioner had filed the aforesaid complaint before the learned JMFC at Kadi in Mehsana District against the accused for the offences punishable under Sections 406, 409 and 114 of the Indian Penal Code. On receiving the complaint, the learned Magistrate has passed the aforesaid order on 16.2.2001.

4. The learned advocate for petitioner has argued that since the learned Magistrate did not follow the procedural provision made in Section 200 of the Code The order passed by him is without following the procedure laiddown in Section 200 of the Code and hence it is illegal.

5. Section 200 of the Code, reads as follows :-

" A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate : provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses -

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192 ;

Provided further that if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them."

6. This means that, when the Magistrate takes cognizance of an offence on complaint, he is required to examine upon oath the complainant and the witness present, if any, and the substance of such examination, is required to be reduced in writing and is required to be signed by the complainant and the witness, as the case may be, and also by the Magistrate.

7. Looking to the aforesaid facts and circumstances of the case, in the present case, the aforesaid proviso is not admittedly applicable, since the complainant is not a public servant and the learned Magistrate did not make over the case for inquiry or trial to any Magistrate under Section 192 of the Code.

8. Therefore, it was an obligatory duty on the part of the learned Magistrate to examine the complainant on oath and to obtain his signature below such examination. This has not been done in the present case.

9. It is therefore, clear that the provision made in Section 200 of the Code is mandatory and learned Magistrate was bound to follow the said procedure before taking cognizance of the offence in question.

10. Admittedly, the learned Magistrate has taken cognizance of an offence by passing an order of inquiry by police under Section 202 of the Code without following the procedure laiddown in Section 200 of the Code. In other words, the learned Magistrate has taken cognizance of the offence without examining the complainant on oath and without reducing the said examination into writing.

11. In above view of the matter, it is apparently clear that the order passed by the learned Magistrate directing the complainant to present before the police station at Kadi for inquiry under Section 202 of the Code is apparently illegal and against the mandatory provisions made in Section 202 of the Code.

12. The petitioner before this Court has prayed that this Court should substitute its order by directing the police station concerned to take cognizance of the complaint and to investigate the offence under Section 156(3) of the Code instead of the order passed by the learned Magistrate for referring the said complaint to the police station for inquiry under Section 202 of the Code.

13. I am of the opinion that there is no reason for

substitution of the said order by this Court for the order passed by the learned Magistrate, simply because reference of the complaint to the police station at Kadi for inquiry under Section 202 of the Code without examining the complainant on oath, is illegal.

14. Naturally, when a private complaint is received by a Judicial Magistrate, it is open to him to follow as under :-

(i) to issue process of appropriate offence

(ii) to direct inquiry by the concerned police station under Section 202 of the Code.

(iii) to undertake inquiry himself under Section 202 of the Code.

(iv) To refer the matter under Section 156(3) of the Code to the police station concerned for taking cognizance, investigation and report.

(v) to dismiss the complaint under Section 203 of the Code, if no offence is made out.

15. However, before passing any order for inquiry under Section 202 of the Code, it would be necessary for him to examine the complainant on oath.

16. As said above, the aforesaid mandatory provision has not been complied with and therefore, the order passed by the learned Magistrate is ex-facie illegal and deserves to be set aside.

16. In above view of the matter, this Criminal Revision Application is allowed. The order passed by the learned JMFC at Kadi in Mehsana District on 16.2.2001 in Criminal Inquiry No. 202/6/2001 is set aside. The matter is remanded back to the learned Magistrate at Kadi for passing appropriate legal order after following the due process of law as discussed hereinabove and as directed in the Criminal Procedure Code, 1973. Rule is made absolute to that extent.

(D.P. Buch, J.)

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